IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Crl.MC.No. 2302 of 2007()

(CRIME NO.54/07 OF PALARIVATTOM POLICE STATION DATED 28.2.07)

PETITIONER:

JAZIM JALEEL.A.A., AGED 22 YEARS,
S/O.T.A.ABDUL JALEEL, RESIDING AT
NADIRA MANZIL, H.NO.C.C.7/925,
A.K.ROAD, COCHIN - 2.

BY ADV. SRI.C.KHALID
SRI.R.O.MUHAMED SHEMEEM
SRI.T.P.SAJID
SMT.M.A.SULFIA

RESPONDENTS:

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1. SUB INSPECTOR OF POLICE,
PALARIVATTOM POLICE STATION,
PALARIVATTOM, KOCHI.

2. L.ASHOK KUMAR, AGED 58 YEARS,
S/O.J.LAKSHMANAN PILLAI, MANAGER OF
UNION BANK OF INDIA, H.NO.31/1587,
GANDHI JAYANTHI ROAD, THAMMANAM, KOCHI - 32.

3. LAILA ASHOK, AGED 44 YEARS,
W/O.J.ASHOK KUMAR, H.NO.GANDHI JAYANTHI ROAD,
THAMMANAM, KOCHI - 32.

4. STATE OF KERALA,
REP. BY GOVERNMENT PLEADER,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2302 Of 2007

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Dated this the 18th day of July, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 379 IPC. The defacto complainant who initiated the proceedings had complained that the credit card of the wife of the complainant was stolen. Investigation revealed the complicity of the petitioner. Final report was received. Cognizance has been taken. Prosecution under Sec.379 is pending against the petitioner.

2. The petitioner has now come before this Court with a prayer that powers under Sec.482 may be invoked to quash the proceedings against him. What is the reason? The short reason urged is that there has been settlement of disputes between the complainant and the petitioner. The amounts which is allegedly due, consequent to loss of the credit card has already been paid and the complainant has received the same in full satisfaction. In these circumstances, no grievance survives for the complainant. An agreement entered into between the complainant and the petitioner is relied on. The counsel prays that the proceedings initiated against the petitioner may be quashed. I shall for a moment assume and accept that all existing disputes between the complainant and the petitioner have been

amicably and harmoniously settled. But I cannot ignore the fact that offences under Sec.379 IPC of the variety complained of in this case are non compoundable. There is no contention before me that the offence is compoundable. Powers under Sec.482 Cr.P.C. can of course be invoked in aid of justice. In an appropriate case, the extra ordinary inherent jurisdiction can be invoked in the interests of justice, where the interests of justice transcend the interests of mere law. The decision inB.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] clearly accepts this proposition.

3. The Courts must be very careful to invoke the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386]. and must carefully insist on such invocation is only in appropriate cases. The dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386], according to me, does not and cannot obliterate the distinction between compoundable and non compoundable offences, which legislation enjoins under Sec.320 Cr.P.C. All crimes are assumed to be offences against the State and the State is the aggrieved party in all crimes. But law reckons the distinction and declares that in respect of compoundable offences, though the State is also aggrieved, the person primarily aggrieved can be permitted to compound the offences. In respect of the non compoundable offences such composition is impermissible ordinarily.

4. Is there any compelling circumstances which can persuade this Court to ignore the mandate of Section 320 Cr.P.C and apply in the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] ? Except that the parties have voluntarily and willingly settled the disputes and non acceptance of the composition would act as a strain in the relationship between the parties, no other submission is made.

5. It is also submitted that there is the possibility of a contention if the matter goes for trial that the wife had voluntarily handed over the credit card to the petitioner and this would amount to imputation against the character of the wife of the complainant. I am unable to agree that these reasons are sufficient to persuade this Court to invoke the powers under Section 482 Cr.P.C. and bring to premature termination of the proceedings after granting approval for composition of the non compoundable offence, which under law is impermissible. The petitioner must certainly face the trial and cannot seek premature termination of the proceedings by invoking the powers under Sec.482 Cr.P.C.

6. In these circumstances, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

sj